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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,822	02/27/2004	Kevin L. Loss	030048123US	6968
25096	7590	06/02/2005	EXAMINER	
PERKINS COIE LLP			HOLZEN, STEPHEN A	
PATENT-SEA			ART UNIT	
P.O. BOX 1247			PAPER NUMBER	
SEATTLE, WA 98111-1247			3644	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/788,822

Applicant(s)

LOSS ET AL.

Examiner

Stephen A. Holzen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-27, 29-34, 38-40, 44-46, 48, 50-52 and 54-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 2-27,29-34,38-40,44-46,48,50-52 and 54-66.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 2-27, 29-34, and 58-64, drawn to Vehicle System, classified in class 244, subclass 129.2.
  - II. Claims 38-40, 44-46, 48, and 65, drawn to Method for controlling a flammability control system, classified in class 169, subclass 67.
  - III. Claims 50-52, drawn to Computer Readable Medium, classified in class 169, subclass 61.
  - IV. Claims 54-57 and 66 drawn to a system for controlling a FCS, classified in class 169, subclass 68.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the product as claimed can be used in a different method having only one level of operation

3. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require various levels of flammable vapors for operations of the FCS. The subcombination has separate utility such as in a lawnmower.

Note: Since that the subcombination combines two statutory classes (method and apparatus), where only the structural limitation is a control system capable of use in a lawnmower.

4. Inventions I and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (claim 4) as claimed does not require the particulars of the subcombination (claim 54) as claimed. The combination does not require the different flow rates of inerting gas and the subcombination can be used in a lawnmower.

Note: The limitation "operational phase" and "landing gear" are claimed in the alternative and this invention can broadly read on a FCS in any number of

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various combinations that require fuel (push-type lawnmower, Chain Saws, Wood Chippers).

5. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used in a method having only one operational level.

6. Inventions II and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the produce can be practice by a different method such as one wherein the second flow rate less than the first flow rate and is zero.

7. Inventions III and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the

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particulars of the subcombination as claimed because the combination does not require a flammability control system (since in the combination it is not positively claimed). The subcombination has separate utility such as a computer programmed that controls a fan.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

9. This application contains claims directed to the following patentably distinct species of the claimed invention.

10. Upon election of one of groups I-IV above applicant is required under 35 U.S.C. 121 to elect a single disclosed species of Conditions for Controlling the FCS for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

- a. Fuel Tank Condition only
- b. Operational Condition only
- c. Fuel Tank and Operation Condition in combination

11. Upon election of one of a or c above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of the basis for controlling the FCS for prosecution on

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the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

- d. Probability of Fuel Tank Ignition
- e. Sensor Signals

12. If applicant elects e above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of the fuel tank sensor signals, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. This is to facilitate examining due to the broad range of sensor signals disclosed and claimed as being suitable. (i.e. Air Temperature outside the fuel tank only; Air Temperature outside the fuel tank and a pressure signal within the fuel tank only; Air pressure outside the fuel tank and temperature of a wall of the fuel tank only; Air Temperature outside the fuel tank, pressure signal of fuel only; Air temperature outside the fuel tank and level of flammable vapors, etc., this list is not inclusive, and the applicant should refer to Figure 1 and the various embodiments listed within the specification to elect a single embodiments of signal sources.)

13. Upon election of one of I-IV above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of FCS control types for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

- f. Air Conditioning
- g. Fuel Inerting Means



14. If applicant elections "g" above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of a second level of inerting flow rates for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

h. Wherein the second level is less than the first level but not equal to zero

i. Wherein the second level is less than the first level and equal to zero

15. If applicant elects "g" above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of sources for providing inerting gasses for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

j. Providing inert gas from a bottle

k. Providing inert bleed air gas from the engine

16. If applicant elects one of b or c above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of operational phases, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

l. An indication that the aircraft is on the ground

m. An indication of the rate of climb

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17. If applicant elects one of b or c above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species of operational signal sources for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. This is to facilitate examining due to the broad range of operational signal sources disclosed and claimed as being suitable. (i.e. Landing Gear Sensor only, landing gear and air-conditioning sensor only, air-condition sensor only, altimeter only, altimeter and landing gear only; etc., this list is not exhaustive, and applicant should elect a single operation signal source or the combination of a single disclosed species of operational signal sources.)

18. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

19. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

20. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 571-272-6903. The examiner can normally be reached on M-F 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey E Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**  
5/31/05